(27,383)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 628.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, PETITIONER,

vs.

McCAULL-DINSMORE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 29, 1920.

a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1919, of said Court, before the Honorable William C. Hook and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Charles F. Amidon, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to wit: on the twentieth day of November, A. D. 1918, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the District of Minnesota, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the Chicago, Milwaukee & St. Paul Railway Company was Plaintiff in Error, and the McCaull-Dinsmore Company was Defendant in Error, which said transcript as prepared and printed in pursuance of the stipulation of the parties for the use of the Court upon the hearing of said cause, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to wit:

1 (*Stipulation as to Printing Record.*)

United States Circuit Court of Appeals Eighth Circuit.

It is hereby stipulated, in the above entitled cause, that the following named portions of the record herein, and none other, shall be printed for use on the hearing of the writ of error herein, to wit:

The complaint; the answer, omitting title; the stipulation of facts, omitting title; the findings; order for judgment and memorandum of the court, omitting title; the judgment, omitting title; the petition for writ, omitting title; the assignments of errors, omitting title; order for writ, omitting title; the writ and return, omitting title; the citation and proof of service, omitting title, and this stipulation, omitting title.

And said parties hereby designate the aforesaid mentioned portions of said record as parts thereof which they deem necessary or material for the consideration of the errors assigned herein.

Dated, August 29, 1918.

F. W. ROOT & NELSON J. WILCOX,
Attorneys for Plaintiff in Error.
COBB WHEELWRIGHT & DILLE,
Attorneys for Defendant in Error.

Endorsed: Filed in the U. S. Circuit Court of Appeals, November 25, 1918.

United States District Court District of Minnesota, Fourth Division.

No. 563.

McCaull-Dinsmore Company, Plaintiff,

vs.

Chicago, Milwaukee & St. Paul Railway Company, Defendant.

Pleas Before the Honorable the Judges of the District Court of the United States of America for the District of Minnesota, Fourth Division, at the April Term of Said Court Held in Said District in the Year of Our Lord, A. D. 1918.

2 District of Minnesota, *ss:*

. Be it Remembered that on the 23rd day of August, A. D. 1918, came the plaintiff above named by Messrs. Cobb, Wheelwright & Dille, its attorneys, and filed in the clerk's office of said court a certain complaint, which said complaint is in the words and figures following, to wit:

(*Complaint.*)

The plaintiff above named complains of the defendant above named and alleges:

1. That at all times hereinafter mentioned, plaintiff has been and now is a corporation duly created, organized and existing under and by virtue of the laws of the State of Minnesota, and is a citizen of said State, having its offices and principal place of business in the City of Minneapolis, County of Hennepin and State of Minnesota, and is a resident and inhabitant of said division.

2. That at all the times hereinafter mentioned, the defendant has been and now is a railway corporation created, organized and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen of said State, and engaged as a common carrier of freight and passengers for hire in the states hereinafter mentioned and engaged as a common carrier of freight and passengers for hire in the interstate commerce.

3. That at Three Forks, Montana, on the 17th day of November, 1915, the Three Valley Cooperative Association delivered to the defendant 88,000 pounds of number two hard Montana wheat, which was the property of the plaintiff and which was then and there loaded into Canadian Pacific car No. 210,470, and the defendant then and there issued its order bill of lading therefor and agreed to safely trans-

port said grain from Three Forks to Omaha, Nebraska, and there deliver the same to the plaintiff or to such person as it might designate.

4. That on or about the 5th day of December, 1915, said car and its said contents, through the carelessness and negligence of defendant were wrecked in transit and no part of said grain was ever transported to destination.

5. That ten days from the day when said car was loaded as aforesaid would have been a reasonable time in which to move said car of grain from said Three Forks to said Omaha; that the fair market value of said grain at the time and place of destination when it should have been delivered there by the defendant as aforesaid, with interest, less lawful freight charges, was the sum of One thousand four hundred and twenty-two and 11/100 dollars ($1,422.11); that no part of said sum of One thousand four hundred twenty-two and 11/100 dollars ($1,422.11) has ever been paid, except that the defendant paid to plaintiff on March 8, 1916, the sum of One thousand two hundred and 48/100 dollars ($1,200.48).

6. That paragraph 2 of Section 3 of said order bill of lading as amended by Supplement No. 6 to Western Classification No. 53, effective June 2d, 1915, provides as follows:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges if paid."

7. That the defendant claims that by virtue of said provision in said bill of lading, it is not liable for the value of said destroyed wheat at the point of destination, as alleged in paragraph 5 hereof, but is liable for the value thereof at the place and time of shipment.

8. That said provision in said bill of lading is expressly prohibited by the so-called Cummins Amendment, being the Act of Congress of March 4th, 1915, with respect to the regulation of common carriers of interstate and foreign commerce.

9. That this is a suit and proceeding arising under the Act of Congress of February 4th, 1887, and the several Acts amendatory thereof, and the said Act of March 4th, 1915, and is a suit and proceeding arising under the constitution and laws of the United States.

Wherefore, Plaintiff prays judgment against the defendant for the sum of Two hundred twenty-one and 63/100 ollars ($2,221.63) with terest on One thousand four hundred and twenty-two and 11/100 ($1,422.11) since the 27th day of November, 1915, and with interest on Two hundred twenty-one and 63/100 dollars ($221.63) since the

8th day of March, 1916, together with plaintiff's costs and disbursements herein.

COBB, WHEELWRIGHT & DILLE,
Attorney for Plaintiff, 311 *Nicollet Avenue, Minneapolis, Minnesota.*

Endorsed: Filed in the District Court on August 23, 1918.

4 (*Answer.*)

Answering the complaint herein the defendant admits the several allegations composing paragraphs 1 and 2 of said complaint;

Admits that at said Three Forks, Montana, on the 17th day of November, 1915, the Three Valley Cooperative Association delivered to the defendant a certain quantity of bulk wheat, contained in Canadian Pacific car Number 210,470, consigned and for transportation to McCaull-Dinsmore Co., for account of the McCaull-Dinsmore Company, Omaha, Nebraska.

Admits and alleges that co-incident with the delivery of said wheat to this defendant, this defendant issued to plaintiff its tariff standard bill of lading covering said transportation.

Admits and alleges that under and by virtue of said bill of lading it was agreed by and between the plaintiff and defendant in consideration for the rate agreed upon and charged for such transportation as aforesaid, that "the amount of any loss or damage for which any carrier should be liable should be computed on the basis of the value of the property at the place and time of shipment, including freight charges, if paid."

Defendant admits that on or about the 5th day of December, 1915, said car and contents were wrecked in transit, and no part of said grain was transported to destination.

Admits that ten days would have been a reasonable time in which to transport said car of grain from said Three Forks to said Omaha.

Admits that the defendant has paid to plaintiff, for such loss or damage as plaintiff has suffered by reason of the failure to transport said grain to destination, only the sum of Twelve Hundred and Forty-eight One Hundredths. ($1,200.48.)

Admits that the defendant claims as in Paragraph 7 of said complaint alleged.

Admits the allegations of Paragraph 9 of said complaint.

Save as hereinbefore admitted or alleged, the defendant denies the allegations of the complaint.

5 Wherefore, Defendant demands judgment against the plaintiff that it take nothing by its action and for defendant's costs and disbursements herein.

F. W. ROOT & NELSON J. WILCOX,
Attorneys for Defendant, 25 *Milwaukee Station, Minneapolis, Minn.*

Not verified.

Endorsed: Filed in the District Court on August 23, 1918.

Stipulation of Facts.

It is hereby stipulated and agreed by and between the parties to the above entitled action that the following are facts which will be admitted at the trial without further proof thereof:

That the plaintiff was and is a corporation, duly created, organized and exisiting under the laws of the State of Minnesota, and a citizen of said State, having its principal place of business in the city of Minneapolis, County of Hennepin, State of Minnesota, and is a resident and inhabitant of said Fourth Division;

That the defendant was and is a railway corporation of the State of Wisconsin and a citizen thereof; and was and is a common carrier of freight and passengers for hire in and between the states of Wisconsin, Minnesota, South Dakota, North Dakota, Montana, Iowa and Nebraska.

That at Three Forks, Montana, a station on the line of defendant, on the 17th day of November, 1915, there was delivered to the defendant, in Canadian Pacific car No. 210,470, by the Three Valley Cooperative Association, 87,840 pounds, or 1,464 bushels of No. 2 hard Montana wheat, consigned and for transportation to the McCaull-Dinsmore Company, for account of the McCaull-Dinsmore Company, Omaha, Nebraska; and that said wheat was the property of the plaintiff;

That at the time of such delivery of said wheat to the defendant there was entered into between the consignor thereof and the defendant a certain contract for the purpose of such receipt, transportation and delivery, which said contract is commonly known and referred to as a "uniform bill of lading;"

That said contract was a part of the published tariffs legally published and filed with the Interstate Commerce Commission; that said tariffs provided, among others things, a rate of transportation based on and controlled by said bill of lading or contract; and said tariff further provided that in cases where the shipper was not agreeable to shipping under the terms of said contract or bill of lading, then a higher rate of transportation was provided by said tariffs;

That said contract or bill of lading provided, among others things, as follows: "The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid;"

That on or about the 5th day of December, 1915, said car and contents were wrecked in transit, and the said wheat became so mixed and commingled with other wheat of other persons as to cause its identity to be lost, and no part of said grain was ever transported to destination;

That ten days was a reasonable time for the transportation of said car of grain from said Three Forks to said Omaha;

That the value of said wheat at the place and time of shipment was 82 cents per bushel;

That the fair market value of said wheat at destination, at the time when it should have been there delivered to the plaintiff, with interest, less lawful freight charges, is the sum of Fourteen Hundred and Twenty-two and 11/100 Dollars ($1,422.11); of which the plaintiff received from the defendant on March 8, 1916, the sum of Twelve Hundred and 48/100 Dollars, ($1,200.48);

That the defendant contends that, by virtue of said provision in said bill of lading, it is liable only for the value of said wheat at the place and time of shipment;

That the plaintiff contends that the defendant is liable for the market value of the wheat at destination at the time when it should have been there delivered to the plaintiff, less lawful freight charges.

It is further stipulated that this is a suit and proceeding arising under the Act of Congress of February 4, 1887, and the several Acts amendatory thereof, including the so-called "Cummins
7 Amendment" of March 4, 1915, and is a suit and proceeding arising under the Constitution and Laws of the United States.

COBB, WHEELWRIGHT & DILLE,
Attorneys for Plaintiff.

F. W. ROOT AND
NELSON J. WILCOX,
Attorneys for Defendant.

Dated August 23, 1918.

Endorsed: Filed in District Court on August 23, 1918.

(Findings of Fact and Conclusions of Law; Judgment, August 23, 1918.)

April Term, 1918.

Before Judge Morris.

McCAULL-DINSMORE COMPANY, Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Defendant.

The above entitled action came on for trial at the General April, A. D. 1918 Term of said Court before the undersigned, one of the Judges of said Court, upon an agreed statement of facts, a jury trial having been expressly waived by both parties hereto.

Messrs. Cobb, Wheelwright & Dille appeared as attorneys for the plaintiff, and F. W. Root, Esq. appeared as attorney for the defendant.

I hereby find the following facts established by the agreed written statement of facts and by the admissions of the parties.

Findings of Fact.

1. That the plaintiff was and is a corporation, duly created, organized and existing under the laws of the State of Minnesota, and a citizen of said State, having its principal place of business in the city of Minneapolis, County of Hennepin, State of Minnesota, and is a resident and inhabitant of said Fourth Division.

2. That the defendant was and is a railway corporation of the state of Wisconsin and a citizen thereof, and was and is a common carrier of freight and passengers for hire in and between the States of Wisconsin, Minnesota, South Dakota, North Dakota, Montana, Iowa and Nebraska.

3. That at Three Forks, Montana, a station on the line of defendant, on the 17th day of November, 1915, there was delivered to the defendant, in Canadian Pacific car No. 210,470,
8 by the Three Valley Cooperative Association, 87,840 pounds, or 1,464 bushels, of No. 2 hard Montana wheat, consigned and for transportation to the McCaull-Dinsmore Company, for account of the McCaull-Dinsmore Company, Omaha, Nebraska; and that said wheat was the property of the plaintiff.

4. That at the time of such delivery of said wheat to the defendant there was entered into between the consignor thereof and the defendant a certain contract for the purpose of such receipt, transportation and delivery, which said contract is commonly known and referred to as a "uniform bill of lading".

5. That said contract was a part of the published tariffs legally published and filed with the Interstate Commerce Commission; that said tariffs provided, among other things, a rate of transportation based on and controlled by said bill of lading or contract; and said tariff further provided that in cases where the shipper was not agreeable to shipping under the terms of said contract or bill of lading, then a higher rate of transportation was provided by said tariffs.

6. That said contract or bill of lading provided among other things, as follows: "The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid".

7. That on or about the 5th day of December, 1915, said car and contents were wrecked in transit, and the said wheat became so mixed and commingled with other wheat of other persons as to cause its identity to be lost, and no part of said grain was ever transported to destination.

8. That ten days was a reasonable time for the transportation of said car of grain from said Three Forks to said Omaha.

That the value of said wheat at the place and time of shipment was 82 Cents per bushel.

That the fair market value of said wheat at destination, at the time when it should have been delivered to the plaintiff, with interest, less lawful freight charges, is the sum of Fourteen Hundred and Twenty-two and 11/100 Dollars ($1,422.11); of which the plaintiff received from the defendant, on March 8, 1916, the sum of Twelve Hundred and 48/100 Dollars ($1,200.48).

9. That after the rate was fixed by the Interstate Commerce Commission the freight charges received by the defendant on said shipment of grain were based upon the weight of the grain shipped without regard to value.

That the defendant contends that, by virtue of said provision in said bill of lading, it is liable only for the value of said wheat at the place and time of shipment.

That the plaintiff contends that the defendant is liable for the market value of the wheat at destination at the time when it should have been there delivered to the plaintiff, less lawful freight charges.

That this is a suit and proceeding arising under the Act of Congress of February 4, 1887, and the several Acts amendatory thereof, including the so-called "Cummins Amendment" of March 4, 1915, and is a suit and proceeding arising under the Constitution and Laws of the United States.

Conclusions of Law.

As conclusions of law the Court finds that plaintiff is entitled to judgment against the defendant for the sum of Two hundred twenty-one and 63/100 Dollars ($221.63), with interest thereon since the 27th day of November, A. D. 1915, together with its costs and disbursements.

Let judgment be entered accordingly.

Dated this 23rd day of August, A. D. 1918.

PAGE MORRIS,
Judge.

Wherefore, By reason of the premises aforesaid, it is now by the Court

Considered, Ordered and Adjudged That the plaintiff McCaull-Dinsmore Company, do have and recover of and from the defendant, Chicago, Milwaukee & St. Paul Railway Company, the sum of Two Hundred Fifty-eight and 9/100 Dollars ($258.09), and that said plaintiff have execution therefor, together with its costs and disbursements in this action, to be taxed.

Further Ordered: That execution and all further proceedings herein, except the taxation of costs and entry of judgment therefor, be, and the same hereby are stayed for the period of thirty (30) days from this date to enable the defendant to sue out a writ of error from the United States Circuit Court of Appeals for the Eighth Circuit if it shall be so advised.

10 *Memorandum Opinion of the District Court.*

The sole question in this case is, whether the loss to the shipper is to be measured by the value of the property at the place of destination at the time it should have been delivered, or by the value of the property at the time and place of shipment. And the decision of this question must depend upon whether or not the provision or stipulation in the bill of lading, issued by the carrier and accepted and agreed to by the shipper, that the loss should be measured by the value at the time and place of shipment and settled on that basis, was valid under the Cummins amendment of March 4, 1915, to the Interstate Commerce Act, which was the law in force at the time of the shipment and of the loss.

This amendment was passed after the decisions of the Supreme Court on the Carmack amendment cited by counsel had been rendered, and it is apparent from the language that its proposal and enactment were caused by these decisions and that it was aimed directly at them. Viewed in the light of those decisions and of the purpose evidently sought to be accomplished it is difficult to see how its language could be more sweeping.

"Shall be liable * * * for the full *actual loss* * * * caused by it * * * notwithstanding *any limitation* (the italics are mine) of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and *any such limitation* without respect to the manner or form in which it is sought, to be made, is hereby declared to be unlawful and void." This is the language of the amendment so far as it touches this case. The first proviso indicates the cases, of which this is not one, and the only cases, except from that language, and the only way in such cases of avoiding its terms, and thus emphasizes and, if it were possible, makes more sweeping those terms. I do not see that it can make any difference under the language quoted that this bill of lading was provided for in the schedule of rates filed with the Commission, and that that schedule of rates also provided another bill of lading under which, if issued and accepted, the rate would have been higher.

Under this language is the provision or stipulation above referred to in the bill of lading unlawful and void? If it is an agreement as to value, which I think it is not, it is clearly so. The answer
11 to the question must therefore be found in the answer to the further question, was this a limitation of the liability of the carrier or a limitation of the amount of recovery? And it seems to me the answer to this question is found in the answer to the further question, what would have been the liability of the carrier, and the consequent amount of recovery, if that provision or stipulation had not been in the bill of lading? In the latter case there can be no question, and it was so admitted on the argument, as it had to be, but the liability and the consequent amount of the recovery would

have been that of the common law, namely, the value of the goods at the point of destination at the time they should have been delivered. And that this is the actual loss to the shipper caused by the failure of the carrier to deliver the goods at that time and place, whether the value is greater or less than at the time and place of shipment, is the foundation of the common law rule.

From the foregoing simple statement, I do not see how it is possible to escape the conclusion, upon a fair and open minded consideration of the language of the amendment and the obvious and well known meaning of its terms, that this provision or stipulation in the bill of lading is a limitation of the liability of the carrier and of the amount of recovery, and is therefore unlawful and void.

In reaching this conclusion I have not failed to consider the very able argument of counsel for defendant and also what has been said by the Interstate Commerce Commission, and it is with regret and not a little misgiving that I find myself in difference with men so able and experienced in such matters. But consider the matter as I may I am always irresistibly brought back to this simple statement and to the necessary conclusion therefrom.

I cannot see that there could be any greater difficulty, after loss has occurred, in ascertaining and proving the value at the time and place of delivery or destination than in ascertaining and proving the value at the time and place of shipment.

If it be true, as suggested in the argument and by the Commission, as I think it may be, that the conclusion which I have reached will result in difficulties and confusion in existing rules and regulations and schedules, and in some cases under these rules and regulations and schedules in hardship and injustice to the carriers and possibly in some discrimination amongst shippers, the remedy will be found in facing the law, whose language, as it seems to me, is too plain for construction or evasion, squarely, and revising and
12 reconstructing those rules and regulations to meet it.

PAGE MORRIS,
Judge.

Aug. 23, 1918.

Endorsed: Filed in the District Court on August 23, 1918.

(*Assignment of Errors.*)

Now comes the said Chicago, Milwaukee & St. Paul Railway Company, the defendant above named, and avers that in the entry of the judgment in the above entitled cause, and in the proceedings prior thereto, manifest error was committed by the Trial Court, that is to say;

The said District Court erred:

I.

In holding and adjudging that the provision in the bill of lading, issued by the defendant and accepted and agreed to by the plaintiff,

that the loss should be computed on the basis of the value of the property at the place and time of shipment, was invalid.

II

In holding and adjudging that the provision in the bill of lading that the loss should be computed on the basis of the value of the property at the place and time and shipment constitutes a limitation of liability.

III.

In holding and adjudging that the provision in the bill of lading that the loss should be computed on the basis of the value of the property at the place and time of shipment constitutes a limitation of the amount of recovery.

IV.

In holding and adjudging that the loss in this case is not to be measured by the value of the property at the place and time of shipment, as provided in the contract of shipment.

V.

In holding and adjudging that the loss in this case is to be measured and determined by the value of the property at the time and place of destination.

VI.

In rendering judgment in favor of the plaintiff and against the defendant for the loss to plaintiff, computed on the basis of
13 the value of the property at the time and place of destination, instead of at the place and time of shipment.

Wherefore, the said defendant prays that the judgment of the United States District Court, District of Minnesota, Fourth Division, in the above entitled cause, be reversed and annulled.

F. W. ROOT &
NELSON J. WILCOX,
Attorney- for Defendant.

Endorsed: Filed in the District Court on August 28, 1918.

(*Petition for Writ of Error.*)

Now comes the Chicago, Milwaukee & St. Paul Railway Company, the defendant in the above entitled cause, and says that on the 23rd day August, 1918, this Court entered judgment in said cause in favor of the above named plaintiff and against this defendant for Two Hundred Fifty-Eight and 09/100 Dollars ($258.09). That in said

judgment and in the proceedings in said cause had prior thereto, certain errors were committed to the prejudice of this defendant; which errors will more in detail appear from the Assignments of Errors annexed to this Petition and herewith filed.

Wherefore, this defendant prays that a writ of error may issue in its behalf, returnable to the United States Circuit Court of Appeals, for the Eight- Circuit of the United States, for the correction of the errors so complained of; that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and that the judgment aforesaid be there reversed.

Dated August 28, 1918.

F. W. ROOT &
NELSON J. WILCOX,
Attorney- for Defendant.

Endorsed: Filed in the District Court on August 28, 1918.

(Order Allowing Writ of Error.)

The defendant in the above entitled action having filed in this Court a petition praying that a writ of error issue from the Circuit Court of Appeals for the Eight- Circuit, directed to the United States District Court, District of Minnesota, Fourth Division, to re-
14 verse the judgment heretofore entered in the above entitled Court, on the 23rd day of August, 1918, in favor of the plaintiff above named and against the defendant above named, for the sum of Two Hundred Fifty-Eight and 09/100 Dollars ($258.09), and also a stipulation waiving any bond or undertaking:

It is hereby ordered, that the prayer of said petition be granted, and that a writ of error be issued as prayed for.

Dated Aug. 28, 1918.

WILBUR F. BOOTH, *Judge.*

Endorsed: Filed in the District Court on August 28, 1918.

(Stipulation Waiving Bond on Writ of Error.)

Whereas, the defendant in the above entitled cause is about to petition the Court that a writ of error issue, returnable to the United States Circuit Court of Appeals, for the Eight- Circuit of the United States, for the correction of the errors complained of in the Assignments of Errors annexed to said Petition; the said plaintiff hereby will, and does, for all such purposes, waive any bond or undertaking on the part of the defendant whether for costs or damages, or for any other purpose.

Dated Aug. 28, 1918.

COBB, WHEELWRIGHT & DILLE,
Attorney- for Plaintiff.

Endorsed: Filed in the District Court on August 28, 1918.

(Writ of Error and Clerk's Return.)

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the District of Minnesota, Fourth Division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the April Term, 1918, thereof, between McCaull-Dinsmore Company, Plaintiff, and Chicago, Milwaukee & St. Paul Railway Company Defendant, manifest error hath happened, to the great damage of the said Chicago, Milwaukee & St. Paul Railway Company as by its complaint appears,

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 28th day of October, 1918, to the end that the record and proceedings aforesaid, being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of August, A. D. 1918.

Issued at office in Minneapolis, Minnesota, with the seal of the District Court of the United States, for the District [*or*] Minnesota, Fourth Division.

[Seal U. S. Dist. Court, Dist. of Minnesota, Fourth Division.]

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.
By THOMAS H. HOWARD,
Deputy.

Allowed by:
WILBUR F. BOOTH,
Judge.

Filed August 28th, 1918. Charles L. Spencer, Clerk, by Thomas H. Howard, Deputy.

UNITED STATES OF AMERICA,
District of Minnesota, Fourth Division, ss:

In obedience to the command of the above writ, I herewith transmit to the United States Circuit Court of Appeals for the Eighth Circuit, a duly certified transcript of the record and proceed-
16 ings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the Seal of the District Court of the United States for the District of Minnesota, Fourth Division.

[Seal U. S. Dist. Court, Dist. of Minnesota, Fourth Division.]

CHARLES L. SPENCER,
Clerk of the District Court of the United States for the District of Minnesota.
By THOMAS H. HOWARD,
Deputy.

Endorsed: Filed in the District Court on August 28, 1918.

(*Citation and Admission of Service.*)

UNITED STATES OF AMERICA, *ss:*

To McCaull-Dinsmore Company, Greeting:

You are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States District Court, District of Minnesota, Fourth Division, wherein the Chicago, Milwaukee & St. Paul Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wilbur F. Booth, Judge of said Court, this 29th day of August, in the year of our Lord one thousand nine hundred and eighteen.

WILBUR F. BOOTH,
Judge of said Court.

Due service of the foregoing Citation, by Copy, at Minneapolis, Minnesota, is hereby admitted this 29th day of August, 1918.

COBB, WHEELWRIGHT & DILLE,
Attorneys for Defendant in Error.

Endorsed: Filed in the District Court on September 3, 1918.

17 (*Clerk's Certificate to Transcript.*)

United States of America, District of Minnesota, Fourth Division.

I, Charles L. Spencer, Clerk of said District Court, do hereby certify and return to the Honorable the United States Circuit Court of Appeals for the Eighth Circuit that the foregoing, consisting of 23 pages, numbered consecutively from 1 to 23, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause wherein McCaull-Dinsmore Company is plaintiff and Chicago, Milwaukee & St. Paul Railway Company is defendant, and of the whole thereof, as appears from the original record and files of said court; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original Citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Minneapolis in the District of Minnesota this 24th day of October, A. D. 1918.

[Seal U. S. Dist. Court, Dist. of Minnesota, Fourth Division.]

CHARLES L. SPENCER,
Clerk.
By THOMAS S. HOWARD,
Deputy.

Filed Nov. 20, 1918. E. E. Koch, Clerk.

18 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(*Appearance of Counsel for Plaintiff in Error.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5314.

CHICAGO, MILWAUKEE & ST. PAUL RY. CO., Plaintiff in Error,

vs.

McCAULL-DINSMORE COMPANY.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

F. W. ROOT &
NELSON J. WILCOX,
Minneapolis, Minn.
O. W. DYNES,
Chicago, Ill.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 20, 1918.

(*Appearance of Counsel for Defendant in Error.*)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

ALBERT C. COBB,
J. O. P. WHEELWRIGHT,
JOHN I. DILLE,
311 *Nicollet Ave.*,
Minneapolis, Minn.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 24, 1919.

19 (*Order of Submission.*)

May Term, 1919.

Monday, May 19, 1919.

This cause having been called for hearing in its regular order, argument was commenced by Mr. F. W. Root for plaintiff in error and concluded by Mr. J. O. P. Wheelwright for defendant in error.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

20 (*Opinion.*)

United states Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1919.

No. 5314.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, Plaintiff in Error,

vs.

McCAULL-DINSMORE COMPANY, Defendant in Error.

In Error to the District Court of the United States for the District of Minnesota.

Mr. F. W. Root (Mr. Nelson J. Wilcox was with him on the brief), for plaintiff in error.

Mr. J. O. P. Wheelwright, for defendant in error.

Before Hook and Stone, Circuit Judges, and Amidon, District Judge.

STONE, *Circuit Judge*, delivered the opinion of the Court:

Action for loss of interstate shipment of grain. The facts were stipulated. The shipment was made under a bill of lading or shipping contract wherein it was provided that "The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid." The contract was in a form like that included in the legally published tariffs filed with the Interstate Commerce Commission, which tariffs provided, among other things, a rate of transportation based on and controlled by said form of bill of lading, and that in cases where the shipper was not agreeable to shipping under the terms of such form, then a higher rate was to be charged. The fair market
21 value of the shipment at destination at the time when it should have been delivered, with interest and less freight charges was $1,422.11. The railway has paid thereon $1,200.48, the value at origin at time of shipment. From a judgment for the difference the railway has taken its writ of error. The controversy is over the difference, and the sole question here presented is whether the origin value or the destination value should govern where the shipment was under such a form of interstate bill of lading.

At the time of this shipment the so-called Cummins Amendment of March 4, 1915 (38 Stat. 1196), contained the law in this respect governing form of contracts for interstate shipment. That statute provided:

"That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be

liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common
22 carrier railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: Provided, however, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: Provided further, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law."

The railway seeks to avoid the application of this provision by contending that it, in the present instance, has not sought to limit its liability, but has on the contrary defined liability for the full actual loss, and has by its tariffs thus crystal-ized the method of arriving at the actual loss. We deem such contention unsound. There was no uncertainty as to the time or place of estimating value under the rule of common law—it was the destination. The evident purpose of the provision in the bill of lading was not to introduce certainty, but to avoid the rule existing at law, for the obvious object of escaping a higher valuation which would often arise at destination. Such a provision is unquestionably a limitation, since it forbids application of the established rule.

The railway also says: "The rule, as we contend, was that in the absence of contract, destination value would apply, but that it was not unlawful to agree upon origin value." Whether the
23 parties could so agree at the common law is not material. The Cummins Amendment was not concerned alone with preventing contracts already illegal under the common law, but with prohibiting all agreements having the effect defined by that statute. Congress passed this Act to remedy the defects in the Carmack Amendment (34 Stat. 595) as developed in the case of Adams Express Co. v. Croninger, 226 U. S. 491, and intended thereby to fully

and finally prevent all limitations of this character. Congressional Record, 63rd Congress 3rd Session, Vol. 52, pp. 5446-5451.

The judgment is

Affirmed.

Filed September 22, 1919.

24 *(Judgment.)*

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1919.

Monday, September 22, 1919.

No. 5314.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, Plaintiff in Error,

vs.

McCAULL-DINSMORE COMPANY,

In Error to the District Court of the United States for the District of Minnesota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that the McCaull-Dinsmore Company have and recover against the Chicago, Milwaukee and St. Paul Railway Company the sum of twenty dollars for its costs herein and have execution therefor.

September 22, 1919.

25 *(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Minnesota, as prepared and printed, pursuant to the stipulation of the parties, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a

certain cause in said Circuit Court of Appeals wherein the Chicago, Milwaukee & St. Paul Railway Company was plaintiff in error, and the McCaull-Dinsmore Company was Defendant in Error, No. 5314, as full, true and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-seventh day of October, A. D. 1919.

[Seal United States Circuit Court of Appeals Eighth Circuit.]

E. E. KOCH.
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

26 Supreme Court of the United States.

No. 628.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Petitioner,

vs.

McCAULL-DINSMORE COMPANY, Respondent.

The Supreme Court having granted a writ of certiorari to review the decision of the United States Circuit Court of Appeals, Eighth Circuit, in the suit therein pending in which the Chicago, Milwaukee & St. Paul Railway Company was plaintiff-in-error and McCaull-Dinsmore Company, defendant-in-error, Number 5314;

Now therefore, it is hereby stipulated and agreed, that the transcript of record certified by the clerk of said United States Circuit Court of Appeals under date of the 27th day of October, A. D. 1919, and filed in the office of the clerk of said Supreme Court on or about the 17th day of December, 1919, shall be taken as a return to said writ of certiorari by the Judges of the United States Circuit Court of Appeals to whom the said writ is directed.

Dated January 31st, 1920.

H. H. FIELD.
O. W. DYNES.
F. W. ROOT,
Counsel for Petitioner.
J. O. P. WHEELWRIGHT,
Counsel for Respondent.

27 [Endorsed:] No. 628. Supreme Court of the United States. Chicago, Milwaukee & St. Paul Railway Company, Petitioner, vs. McCaull-Dinsmore Company, Respondent. Stipulation as to Return to Writ of Certiorari. Original Filed Feb. 7, 1920, E. E. Koch, Clerk.

28 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Chicago, Milwaukee & St. Paul Railway Company is plaintiff in error, and McCaull-Dinsmore Company is defendant in error, No. 5314, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
29 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-eighth day of January, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed.] File No. 27,383. Supreme Court of the United States, No. 628, October Term, 1919. Chicago, Milwaukee & St. Paul Railway Company vs. McCaull-Dinsmore Company. Writ of Certiorari. Filed Feb. 7, 1920. E. E. Koch, Clerk.

30 *Return to Writ.*

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Chicago, Milwaukee and St. Paul Railway Company, Plaintiff in Error, vs. McCaull-Dinsmore Company, No. 5314, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth

Circuit, at office in the City of St. Louis, Missouri, this seventh day of February, A. D. 1920.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

31 [Endorsed:] File No. 27,383. Supreme Court U. S. October Term, 1919. Term No. 628. Chicago, Milwaukee & St. Paul Railway Co., Petitioner, vs. McCaull-Dinsmore Company. Writ of certiorari and return. Filed Feb. 9, 1920.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1919.

No. 628

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

Petitioner,

vs.

McCAULL-DINSMORE COMPANY,

Respondent.

MOTION TO ADVANCE CASE.

H. H. FIELD,
O. W. DYNES,
F. W. ROOT,
Counsel for Petitioner.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1919.

No. 628.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

Petitioner,

vs.

McCAULL-DINSMORE COMPANY,

Respondent.

MOTION TO ADVANCE CASE.

Now comes the Chicago, Milwaukee & St. Paul Railway Company, petitioner, and moves this Honorable Court to advance this cause for early hearing and determination, within the contemplation of paragraphs 5 and 7 of Rule 26 of the published rules of this court, and in support of this motion submits the following:

First. The case is one in which the United States are concerned in that its final determination by this court will necessarily govern the treatment of many thousand claims against the United States Railroad Administration similar in nature and principle to the case at bar. Said claims against the United States Railroad Adminis-

tration involve in aggregate a vast sum of money that must be paid out of the funds of the United States Government, if the judgment in the instant case is affirmed.

Second. The case involves an action for loss of an interstate shipment of grain. The facts are agreed upon and presented in the record in the form of a stipulation by the parties. The shipment was made under a bill of lading or shipping contract wherein it was provided that:

> "The amount of any loss or damage for which any carrier is liable, shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges if paid." (Trans., 6.)

The contract of shipment conformed to the provisions of the legally published tariffs filed with the Interstate Commerce Commission which tariffs provided, among other things, a rate of transportation based on and controlled by said form of bill of lading and that in cases where the shipper was not agreeable to shipping under the terms of such form a higher rate would be charged.

The petitioner admitted the loss and its liability therefor upon the basis of said clause, to wit: the value of the property at the place and time of shipment, and the petitioner has paid the respondent an amount representing such value. (p. 6.) Respondent claimed the value of the wheat at destination at the time when it should have been delivered there with interest less freight charges. (p. 2.) The amount sued for is the difference between the amount thus claimed by respondent and the amount paid by petitioner, to wit: $221.63, with interest.

Third. The cause was tried in the District Court upon the pleadings and stipulation of facts and that court found in favor of respondent. (252 Fed., 664.) Upon judgment being entered on that finding writ of

error was sued out of the Circuit Court of Appeals. The latter tribunal affirmed the judgment on September 22, 1919. (pp. 19-21.)

Chicago, Milwaukee & St. Paul Railway Company v. *McCaull-Dinsmore Company*, 260 Fed., 835.

Fourth. The case is one involving general public interest for the reason that substantially all of the railroads of the United States are using a uniform or standard bill of lading containing the clause quoted in paragraph *Second, supra,* and claims of innumerable shippers aggregating many hundred thousand in number, a part of which arose prior to federal control and a part during federal control, are outstanding and will in the main await disposition depending upon the decision of this court in the case at bar.

Fifth. The standard form of bills of lading is still in use and additional claims of shippers are daily accumulating.

Sixth. The standard bills of lading that have been and now are in use provide a period of limitations within which suits may be brought and if the case at bar awaits its regular turn on the calendar, many thousand claims will need be put in suit in order to toll the period of limitations. A vast number of such suits, with their attending costs in time and money, will be obviated if the cause is advanced in accordance with this motion.

Seventh. We are advised that the United States Railroad Administration, by its proper legal officer, will ask leave to join in this motion.

We are advised by the Chairman of the Interstate Commerce Commission it is the desire of that body the cause be advanced, and we are advised it is agreeable

to the respondent that an order advancing the cause be entered.

A more detailed statement of the case is contained in the petition of petitioner on file in this cause and on which this court issued a writ of certiorari.

Respectfully submitted,

H. H. FIELD,
O. W. DYNES,
F. W. ROOT,
Counsel for Petitioner.